

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
150 S. Independence Mall West  
Suite 216, The Public Ledger Building  
Philadelphia, Pennsylvania 19106-3499



Region III/Division of Medicaid and Children's Health

AUG 31 2007

Mr. John G. Folkemer  
Deputy Secretary for Health Care Financing  
Maryland Department of Health and Mental Hygiene  
201 West Preston Street  
Baltimore, Maryland 21201

Dear Mr. Folkemer:

I appreciate receiving your comprehensive response to our Draft Assessment Report for Maryland's New Directions Home and Community Based Waiver (CMS Control #0424-IP). I am pleased to learn of the measures that you are implementing to address our recommendations. I anticipate that the changes will be formalized and operational by the time that you submit your request to renew the waiver, which is scheduled to expire on June 30, 2008.

Enclosed please find a copy of the final report of the assessment review the Centers for Medicare & Medicaid Services (CMS) conducted based upon information the State submitted on January 11, 2007. The report identifies the findings for each assurance, the evidence supporting our conclusions, and recommendations to improve the overall quality of the program. Pertinent information from Maryland's response to the draft report's recommendations has been incorporated into the final report. We have also appended the chart submitted with your July 12, 2007 letter, which identifies the measures you have committed to undertake to address CMS' recommendations and establishes a timeline for accomplishing them.

As you will note from the Executive Summary of this report, CMS has concluded that the State has demonstrated it will substantially meet the regulatory assurances that are required for the program to continue. The CMS will continue to monitor all areas of the waiver program on an on-going basis. My staff and I are available to meet with you to discuss this report and our recommendations.

Please extend our appreciation to your staff for their cooperation and assistance during the review process. If you have questions, please contact Nancy Bonner, of my staff, at 215-861-4173.

Sincerely,

Ted Gallagher  
Associate Regional Administrator

Enclosure

The Medicare Modernization Act provides several new and important enhancements including a prescription drug benefit and preventive services. For more information, please call the national Medicare information line at 1-800-MEDICARE toll-free or the Philadelphia Regional Office beneficiary hot line at 215-861-4226.

cc: M. Sciulli, CMS CO  
A. Yuskas, CMS CO  
J. Spector, Md. DHMH  
J. Wessely, Md. DHMH  
C. Johnson, DDA  
W. Kronmiller, OHCQ  
H. Mirach, CMS RO



**U.S. Department of Health & Human Services**  
**Centers for Medicare & Medicaid Services**

**Region III**  
**FINAL REPORT**  
**August 31, 2007**

**Home and Community-Based Services (HCBS) Waiver Review**  
**Maryland “New Directions” Waiver Program**  
**Control #0424-IP**





## EXECUTIVE SUMMARY

The Maryland New Directions Waiver, Control #0424-IP, was initially effective July 1, 2005. It is designated "Independence Plus" since it incorporates self-direction for certain waiver services. The current renewal is approved through June 30, 2008. The waiver provides home and community-based services (HCBS) to individuals of all ages with developmental disabilities who meet ICF/MR level of care. New Directions HCBS Waiver provides the following self-directed waiver services: Respite, Day Habilitation (Supported Employment), Personal Support, Transportation, Environmental Accessibility Adaptations, Family and Individual Support Services, Support Brokerage, and Assistive Technology. It also covers as traditional waiver services: Resource Coordination, Day Habilitation (Traditional Day Services per COMAR 10.22.07), Transition Services, and Behavioral Supports.

The waiver is approved to serve 200 in Waiver Year 2 ending June 30, 2007 and 300 in Waiver Year 3 ending June 30, 2008. Initial enrollment under the waiver began in 2006. Initial financial reports indicate that the waiver served 11 individuals as of June 30, 2006. Enrollment has grown to 47 participants as of April 2007.

Maryland's Department of Health and Mental Hygiene (DHMH) is the single state agency for Medicaid. DHMH's Office of Health Service (OHS)/Medical Care Programs (MCP) has responsibility for oversight of all HCBS waivers. The New Directions Waiver is administered by the Developmental Disabilities Administration (DDA), a component of DHMH. A memorandum of agreement (MOA) between MCP and DDA delineates the roles of each component. A separate memorandum of understanding (MOU) between DDA and DHMH Office of Health Care Quality (OHCQ) defines OHCQ's supportive roles of surveying providers and investigating complaints involving waiver providers. DDA administers this waiver concurrently with the Community Pathways HCBS Waiver #0023.91.R3.05 which has been in operation for over 20 years. Most operations for the waivers are identical; where differences exist they generally relate to self-direction features of the waiver. New Directions waiver participants live exclusively in homes either with their family or in their own residences.

The CMS conducted the current review of the waiver program in accordance with 42 CFR 441.302 and instructions in the May 28, 2004 (and February 6, 2007 update) Interim Procedural Guidance. We requested that the State provide evidence to CMS to substantiate that the waiver is being administered in accordance with the terms of the approved Section 1915(c) waiver and that the specified assurances are met. A desk review of the materials submitted was completed. CMS and the State also had conference calls and e-mail exchanges to obtain clarification, additional information, and supplementary documentation.

Overall, CMS finds that, upon implementation of the recommendations in this report, the waiver program will have met the regulatory assurances that are required for the program to continue. Our review of the evidence found that for the New Directions Waiver, the State has demonstrated that they have measures in place to meet the assurances. Commendable practices include a well-developed complaint management system, the Policy on Reportable Incidents and Investigations (PORI), the "Ask Me Survey" which is a peer-conducted survey to measure waiver participants' satisfaction and the State's rich assortment of waiver-dedicated Internet



resources. CMS recommended some opportunities for the state to enhance their waiver program. These included improving data collection capability, instituting sampling, introduction of aggregate reporting systems, updating inter-agency agreements to clarify roles and responsibilities, introducing formal reporting processes, and assuring adequate staffing. CMS also reminded the State of their responsibility to assure waiver participants' free choice among providers for all waiver "services". Finally, CMS pointed out that the DDA Quality Plan was in effect prior to the approval of the New Directions Waiver. It requires updating to address the unique aspects of this self-directed waiver. Please read the full report for CMS' recommendations to strengthen the State's existing process and the State's commitment to make recommended changes.

The CMS issued a draft report to the State on June 12, 2007. They responded on July 12, advising CMS that they concurred with our recommendations and planned to take action to address them prior to submitting their waiver renewal application. The State's responses are embedded in the final report. Attachment A is a chart of the State's planned activities with target dates. CMS appreciates Maryland's cooperation and commitment to serving individuals under this HCBS waiver.

**Home and Community-Based Services  
Final Waiver Assessment Report  
Maryland “New Directions”  
#0424-IP**

**Introduction:**

Pursuant to section 1915(c) of the Social Security Act, the Secretary of the Department of Health and Human Services has the authority to waive certain Medicaid statutory requirements to enable a State to provide a broad array of home and community-based services (HCBS) as an alternative to institutionalization. The Centers for Medicare and Medicaid Services (CMS) has been delegated the responsibility and authority to approve State HCBS waiver programs.

The CMS must assess each home and community based waiver program in order to determine that State assurances are met. This assessment also serves to inform CMS in its review of the State's request to renew the waiver.

**State's Waiver Name:** “New Directions”  
HCBS Waiver for Individuals with MR/DD #0424-IP

**Operating Agency:** Maryland Department of Health and Mental Hygiene  
Developmental Disabilities Administration

**State Waiver Contact:** Jill Spector, Deputy Director  
Long Term Care and Waiver Programs  
(302) 767-5248

**Target Population:** Individuals of All Ages with Developmental Disabilities

**Level of Care:** Intermediate Care Facility for Individuals with Mental Retardation  
and Related Conditions (ICFMR)

**Number of Waiver Participants:** 11 (source: 372 Report, June 2006)

**Average Annual per capita costs:** \$9,103.74 (source: 372 Report, June 2006)

**Effective Dates of Waiver:** July 1, 2005 – June 30, 2008

**Approved Waiver Services:** Self-directed waiver services: Respite, Day Habilitation (Supported Employment), Personal Support, Transportation, Environmental Accessibility Adaptations, Family and Individual Support Services, Support Brokerage, and Assistive Technology. Traditional waiver services: Resource Coordination, Day Habilitation (Traditional Day Services per COMAR 10.22.07), Transition Services, and Behavioral Supports.

**CMS Contact:** Nancy Bonner  
Maryland Waiver Coordinator  
(215) 861-4173



## **I. State Conducts Level of Care Determinations Consistent with the Need for Institutionalization**

**The State must demonstrate that it implements the processes and instrument(s) specified in its approved waiver for evaluating/reevaluating an applicant's/waiver participant's level of care consistent with care provided in a hospital, NF, or ICF/MR.**

*Authority: 42 CFR 441.301; 42 CFR 441.302; 42 CFR 441.303; SMM 4442.5*

**The State demonstrates the assurance but CMS recommends improvements or requests additional information.**

**Evidence Supporting Conclusion:** For the New Directions Waiver, the State relies on the resource coordinators, i.e., case managers to conduct initial eligibility interviews. Resource Coordinators are generally county health departments; some are contracted entities, such as Goodwill or Association of Retarded Citizens (ARC) chapters. They prepare a critical needs recommendation form and forward it to the Developmental Disabilities Administration (DDA) regional office. DDA makes the final eligibility determination. Eligible individuals are placed on the DDA waitlist and assigned a service priority category in accordance with State regulations. After individuals are placed in the waiver, DDA manages their progress through a data base of participants and communicates quarterly with the resource coordinator to obtain annual Level of Care (LOC) recertification forms as they are due. The criteria used for LOC determinations is outlined in the Annotated Code of Maryland, Title VII, Developmental Disabilities Law 7:101(e) and is comparable to the federal definition in 42 CFR 483.102(b)(3) or 42 CFR 436.1009, as outlined in the currently approved waiver.

The State provided a description of their LOC process, samples of forms utilized, a sample data report quantifying applications and determinations, a sample of the report used to notify resource coordinators of cases due for annual recertification and to monitor annual LOC re-evaluations and examples of letters used to address inappropriate LOC decisions and communicate hearings/appeals rights to applicants. Further, it included minutes of management meetings that record efforts to identify and address any circumstances that affect the waiver application and LOC processes.

**Suggested Recommendations:** The State has demonstrated that it has formal processes in place for handling applications and assuring that LOC determinations and re-determinations are made. However, the Waiver Quality Assurance Plan (dated 12/19/2003) does not include a methodology for testing the overall effectiveness of the State's system. CMS recommends that a sampling program be put in place to provide summary data to demonstrate that the State is following its procedures and that LOC decisions are appropriate and timely. Capturing such data would allow for the state to pinpoint local issues, discover trends, and implement remedial measures, as appropriate. CMS also notes that the Quality Plan was developed prior to the approval of the New Directions Waiver and the State should assure it is updated and modified to address unique aspects of this waiver.



## **The State's Response:**

“Recommendations from CMS:

1) CMS recommends that a sampling program be put in place to provide summary data to demonstrate that the State is following its procedures and that LOC decisions are appropriate and timely.

The Maryland Department of Health and Mental Hygiene concurs with the recommendation that a sampling program be put in place to provide summary data to demonstrate that the State is following its procedures and that LOC decisions are appropriate and timely. The Maryland Developmental Disabilities Administration will develop and pilot a sampling procedure with the goal of having a final sampling program in place by December, 2007.

2) CMS also notes that the Quality Plan was developed prior to the approval of the New Directions Waiver and the State should assure it is updated and modified to address unique aspects of this waiver.

The Maryland Department of Health and Mental Hygiene concurs with CMS that the Quality Plan which was developed prior to the approval of the New Directions Waiver needs to be updated. The Maryland Medical Care Program and Developmental Disabilities Administration are currently in the process of updating the Plan. An updated and modified Quality Plan will reflect the unique aspects of the New Directions waiver and will be submitted with the waiver renewal application prior to April 1, 2008.”

## **II. Service Plans are Responsive to Waiver Participant Needs**

**The State must demonstrate that it has designed and implemented an adequate system for reviewing the adequacy of service plans for waiver participants.**

*Authority: 42 CFR 441.301; 42 CFR 441.302; 42 CFR 441.303; SMM 4442.6; SMM 4442.7 Section 1915(c) Waiver Format, Item Number 13*

**The State demonstrates the assurance but CMS recommends improvements or requests additional information.**

**Evidence Supporting This Conclusion:** Maryland's process provides that once an individual is accepted in the waiver, he/she is assigned to a resource coordinator for case management. The resource coordinator interviews new waiver participants and discusses their needs and preferences. The resource coordinator records the individual's choice to receive HCBS waiver services and his community provider selection(s) on an Interpretive Interview Form, which is signed by the participant or legal representative. The resource/service coordinator works with the participant, legal representative, and anyone invited by the individual to help the participant develop a person-centered plan of community-based services and supports which forms a basis for the individualized budget. The individual also selects a financial management service (FMS) provider to serve as fiscal intermediary. DDA reviews and approves the plan of care (POC) and individual budget for self-directed services. Additional funding may be provided for services covered through traditional provider payment systems (i.e., not self-directed). New Directions



waiver participants cannot receive waiver funded services until their POC is developed and approved. The participants can direct and hire their own staff or receive services from licensed providers. For self-direction, the participant must use an FMS for fiscal intermediary services. The POC must specify back-up and emergency services. It must be updated at least annually thereafter. POCs may be modified at any time, as the individual's needs change. The individual, guardian, family, resource coordinator, and involved care providers might initiate requests to update the POC. The resource coordinator is responsible for monitoring, documenting and updating the POC. DDA maintains copies of the POCs and has established a database to ensure compliance with participant's review dates. New Directions participants can move resources among and between all or some of the services contained in their POCs without team meetings and formal POC revisions.

Provider agencies are required to maintain records for each waiver participant they serve, including their POCs and documentation pertaining to delivery of services. The records are to be made available to the DDA and the Office of Health Care Quality (OHCQ) for provider and resource coordinator monitoring. DDA has a regional presence in four areas throughout the State (Central, Western, Southern and Eastern). Each region is responsible for monitoring the resource/service coordinators within its area. Each has a Quality Assurance Review Team (QART) member who is responsible to visit provider agencies annually and, as needed, to evaluate delivery of services to waiver participants as specified in POCs. The QART members meet monthly to discuss and follow-up on findings from their visits. The OHCQ also has responsibility for monitoring resource/service coordination's staff development and for monitoring POCs and compliance to state regulations. Resource/service coordinators are licensed vendors and subject to annual inspections by OHCQ.

The State described their process for developing POCs and monitoring their implementation for all waiver participants. It provided examples of the forms used to develop POCs and update existing POCs. To demonstrate that they take appropriate action when inadequacies are identified in the process, the State included an OHCQ survey report of their review of a county health department (i.e. resource coordinator), the resultant Plan of Correction and OHCQ's acceptance of the Plan of Correction. In addition, they provided a copy of a DDA regional office site visit evaluation review form and correspondence with the provider to assure corrective action was initiated and that DDA made a return visit to verify compliance. Resource coordinators are responsible for validating that services are delivered in accordance with the POC and to determine participants' satisfaction with services provided. OHCQ staff conducts provider agency inspections and interview waiver participants, guardians, and others to ascertain that services were provided and acceptable. Where concerns are identified, the DDA and/or OHCQ is responsible for approval of an acceptable Plan of Correction and follow-up to assure compliance.

In addition, Maryland DDA instituted the "Ask Me Survey", to measure quality of life for Maryland residents with developmental disabilities receiving DDA and waiver funded services. The program employs disabled individuals to interview their peers. The "Ask Me Survey" results are tabulated and annual reports are published on DDA's website to be accessed by the public, providers, resource coordinators, DDA staff, families, etc. for informational and planning purposes. State management uses the information for service improvement purposes.



**Suggested Recommendations:** According to the Quality Plan for the Maryland DDA, dated 12/19/03, the OHCQ is responsible for conducting annual surveys of DDA providers. In this effort, OHCQ reviews individual case files to ensure development, implementation and updating of POCs. No aggregate reporting categorizing survey findings is in place to allow the State to calculate overall performance and pinpoint problems in specific areas. Upon CMS' request, the State provided a copy of OHCQ's annual report of DDA survey activity. It does not categorize survey results, but quantifies surveys completed. It does not reflect that annual surveys are being done. Further, OHCQ 2007 Priorities, outlined in an October 2006 Report to the Maryland General Assembly (which is available on the DHMH Website), discloses staffing shortages and projects that OHCQ will survey just 40% of DDA providers of adult services and 40% of DDA's licensed children's services providers. This is out of line with DDA's stated policies for the waiver. The State must formalize a process for overseeing OHCQ's activities. CMS recommends that they capture aggregate data to measure effectiveness of the Medicaid program in meeting waiver assurances. Further, the Quality Plan was developed prior to the approval of the New Directions Waiver and must be updated to address unique aspects of this self-directed waiver. CMS requests that the State provide a crosswalk demonstrating how the OHCQ survey instrument addresses specific points of assurances and if there are specific measures from which the State gleans information. Also CMS requests that the State specify the sample size used.

#### **The State's Response:**

"Recommendations from CMS:

1) The State must formalize a process for overseeing OHCQ's activities. CMS recommends that they capture aggregate data to measure effectiveness of the Medicaid program in meeting waiver assurances.

Response: The Maryland Department of Health and Mental Hygiene concurs with CMS that a formalized process for reporting survey findings, analyzing overall performance and identifying problems in specific areas is required. Within the current system, OHCQ provider surveys focus on compliance with DDA regulations and the DDA Quality Managers focus on both compliance and the provision of technical assistance for quality improvement. The Medical Care Program, DDA, and OHCQ are currently developing a plan to focus resources in needed areas, which will be included in a revised Quality Plan to be submitted with the waiver renewal application prior to April 1, 2008.

2) Further, the Quality Plan was developed prior to the approval of the New Directions Waiver and must be updated to address unique aspects of this self-directed waiver. CMS requests that the State provide a crosswalk demonstrating how the OHCQ survey instrument addresses specific points of assurances and if there are specific measures from which the State gleans information. Also CMS requests that the State specify the sample size used.

Response: The Maryland Department of Health and Mental Hygiene concurs with CMS that the Quality Plan which was developed prior to the approval of the New Directions Waiver needs to be updated. The Maryland Medical Care Program and Developmental Disabilities Administration are currently in the process of updating the Plan. An updated and modified



Quality Plan will include a crosswalk demonstrating how OHCQ survey activities address specific points of assurances. A revised Quality Plan, including the two specific items requested, will be submitted with the waiver renewal application prior to April 1, 2008.”

### **III. Qualified Providers Serve Waiver Participants**

**The State must demonstrate that it has designed and implemented an adequate system for assuring that all waiver services are provided by qualified providers.**

*Authority: 42 CFR 441.302; SMM 4442.4*

**The State demonstrates the assurance but CMS recommends improvements or requests additional information.**

**Evidence Supporting This Conclusion:** Maryland’s oversight of waiver providers is handled jointly by the DDA and OHCQ. Community provider agencies apply for DDA licenses through OHCQ. DDA licenses community Day Habilitation, Residential Services, and Family and Individual Support Services programs. Once they are licensed by DDA, the providers must enroll as Medicaid providers. DDA submits enrollments to Medicaid (OHP/MCP), which assigns a Medicaid number and enrolls the provider into the Medicaid Management Information System (MMIS). In instances where providers’ participation ends or is terminated, DDA coordinates the action closely with MCP. New Directions Waiver participants self-direct many services and can choose individuals other than licensed providers to render care. Each participant is required to select their FMS to provide fiscal intermediary services. Under the waiver, FMS are designated as Organized Health Care Delivery Systems (OHCDS). As such, the FMS subcontract with Medicaid and Non-Medicaid providers to allow individuals to receive services approved in the POC. As an OHCDS, the FMS is responsible to verify provider qualifications and keep detailed records available for DDA and consumer inspection. The FMS also is responsible for conducting criminal background checks on individuals hired by waiver participants.

The State provided examples of forms used in the provider enrollment process; the 8/19/2002 Memorandum of Understanding between DDA and OHCQ regarding licensure of community based services; OHCQ’s application review checklist; DDA request to MCP to assign a Medicaid provider number and enroll the provider under MMIS; provider approval notice; DDA offer to provide technical assistance to providers; and an example of a settlement agreement that DDA furnished to MCP to involve Medicaid in the enforcement activity.

The State provided an explanation of the process it follows to assure providers are properly trained and included copies of DDA’s Training Materials. DDA maintains a website with a wide collection of training materials and information about DDA services and events. DDA also produces a newsletter, “New Directions On The Move” with information specific to this self-directed waiver for the public and providers, demonstrating the State’s efforts to keep interested parties informed. DDA regional office visits and OHCQ licensing surveys of community provider agencies provide the forum for reviewing staff training records. The State included examples of an OHCQ survey report and a DDA site visit, each citing deficiencies. To demonstrate that they have a process in place to identify and rectify situations where providers do not meet requirements, the State provided copies of survey reports and communications with a provider that faced termination but eventually complied with a settlement agreement and Plan of Correction to regain its’ provider status.



**Suggested Recommendations:** Information submitted with the evidence response regarding the required frequency of DDA and OHCQ provider visits/surveys is not consistent with the MOU statements of responsibility and the current Quality Plan. “Periodic” is used to describe frequency in the process description; MOU and Quality Plan specify “annual” frequency. The State should clarify its requirements and develop processes to measure each agency’s overall performance in meeting requirements. There was no evidence of routine reporting between OHCQ and DDA. Therefore, CMS recommends that formal communication methods be established and documented.

Further, the OHCQ October 2006 Annual Report, which is mentioned above, discloses that staffing shortages impact OHCQ’s ability to conduct the full amount of survey activities that are required or appropriate. CMS recognizes that OHCQ prioritizes its workload to focus resources on critical matters and areas that have the greatest impact on people’s safety and health. However, this situation has an overall impact on quality oversight of providers offering Medicaid services and CMS recommends the State take prompt action to address it.

Resource Coordination is a service covered under the New Directions HCBS Waiver and, therefore, is subject to Federal regulations at 42 CFR 431.51, *Free Choice of Providers*. This provision stipulates that Medicaid participants may obtain services from any provider qualified to furnish the services and willing to provide them to the particular participant. CMS finds that resource coordinators are being assigned to waiver participants by DDA. Assignments relate to the participant’s County of residence. This constitutes a violation of free choice since independent agencies and individuals are precluded from serving as case managers. CMS recommends that Maryland address this matter in their renewal application. If the State wishes to continue with the current practice, it might explore using Medicaid administrative claiming as a means to underwrite the cost of case management. Should the State wish to continue to offer Resource Coordination as a service, it must meet the requirement that waiver participants be informed of their right to select the provider of their choice. The State would also have to establish a procedure for assuring waiver participants are given their choice among willing providers, and set up a reimbursement process and other mechanisms to support waiver clients who select an independent case management agency.

The CMS also notes that the Quality Plan was developed prior to the approval of the New Directions Waiver and the State must assure it is updated and modified to address unique aspects of this self-directed waiver, including oversight of FMS entities.

### **The State’s Response:**

“Recommendations from CMS:

1) The State should clarify its requirements and develop processes to measure each agency’s overall performance in meeting requirements.

Response: The Maryland Department of Health and Mental Hygiene concurs with CMS that further clarification of requirements and processes are needed to measure each agency’s overall performance in meeting requirements. The Department, including the Developmental Disabilities Administration and Office for Health Care Quality, will enhance processes for



measuring overall agency performance. An updated and modified Quality Plan will include references to agency performance measures and requirements and will be submitted with the waiver renewal application prior to April 1, 2008.

2) There was no evidence of routine reporting between OHCQ and DDA. Therefore, CMS recommends that formal communication methods be established and documented.

Response: The Maryland Department of Health and Mental Hygiene concurs with CMS that existing communication methods between OHCQ and DDA should be enhanced and formalized. An updated and modified Quality Plan will include formal communication methods between OHCQ and DDA and will be submitted with the waiver renewal application prior to April 1, 2008.

3) CMS recognizes that OHCQ prioritizes its workload to focus resources on critical matters and areas that have the greatest impact on people's safety and health. However, this situation (staffing shortages) has an overall impact on quality oversight of providers offering Medicaid services and CMS recommends the State take prompt action to address it.

Response: The Department acknowledges that the Office of Health Care Quality (OHCQ) lacks sufficient surveyor resources to conduct annual surveys of each DDA-licensed site as required under State law. However, the Department is focusing on how to utilize its resources responsibly. In addition to requesting additional surveyors as a part of its annual budgetary process, OHCQ has engaged a consultant, who has previously worked with other states, including advocates and providers to review the existing survey process and determine whether the survey process for Developmental Disabilities Administration community programs is effective and efficient, to determine whether there are alternatives to the required survey of each site on a yearly basis which are sufficient to monitor quality. The consultant will review options such as accreditation, alternating survey years for providers with a good history, sampling sites, etc. The consultant will review documents, meet with surveyors, advocates and other stakeholders. The purpose of this project is to assist the Department in meeting its obligations to oversee DDA-licensed programs in the most effective and efficient manner possible. The consultant will issue a written report in the fall of 2007. The updated and modified Quality Plan will reflect the report's recommendations as appropriate and will be submitted with the waiver renewal application prior to April 1, 2008.

4) CMS recommends that Maryland address violations of free choice in the matter of Resource Coordination in their renewal application.

Response: Currently individuals participating in DDA-administered waivers are given the choice of an individual Resource Coordinator within a specific Resource Coordination agency. DHMH takes the suggestions of CMS under advisement and will seek stakeholder feedback over the coming months. Reforms with regard to Resource Coordination will be included in Maryland's waiver renewal application which will be submitted prior to April 1, 2008.



5) The CMS also notes that the Quality Plan was developed prior to the approval of the New Directions Waiver and the State must assure it is updated and modified to address unique aspects of this self-directed waiver, including oversight of FMS entities.

Response: The Maryland Department of Health and Mental Hygiene concurs with CMS that the Quality Plan which was developed prior to the approval of the New Directions Waiver needs to be updated. The Maryland Medical Care Program and Developmental Disabilities Administration are currently in the process of updating the Plan. An updated and modified Quality Plan will include procedures for oversight of FMS entities.”

#### **IV. Health and Welfare of Waiver Participants**

**The State must demonstrate that, on an ongoing basis, it identifies, addresses, and seeks to prevent instances of abuse, neglect and exploitation.**

*Authority: 42 CFR 441.302; 42 CFR 441.303; SMM 4442.4; SMM 4442.9*

**The State demonstrates the assurance but CMS recommends improvements or requests additional information.**

**Evidence Supporting This Conclusion:** The Maryland DDA has a well-developed, aggressive system in place to protect individuals with developmental disabilities from abuse, neglect and exploitation. The Policy on Reportable Incidents and Investigations (PORI) was designed with input from advocates, providers, DDA and OHCQ staff. It is designed for identifying, reporting, investigating, monitoring and preventing incidents. Under New Directions, incidents must be reported directly to DDA and OHCQ by individuals, their Support Brokers, family members or other interested parties. The OHCQ DD Investigations Unit handles complaints and maintains the database for DDA. The OHCQ began using the Aspen/Complaints/Incident Tracking System (ACTS) April 1, 2006. The ACTS module manages incident and complaint reporting, including intake, assignment, monitoring and summary report information. It is organized around provider identities and records the details of the complaint and how it is handled. OHCQ triages complaints as they arrive. It addresses serious allegations as a priority, and if issues involve areas outside OHCQ’s and/or DDA’s jurisdiction, it refers them to the appropriate jurisdiction. After an investigation is completed, OHCQ sends the summary report to DDA in ACTS. The ACTS database provides aggregate information to DDA permitting trend analysis of incident and complaint occurrences by facility by type and by frequency.

In addition to PORI, DDA has other mechanisms in place to evaluate and address issues regarding waiver clients’ health and welfare. These include:

1. The Mortality Review Committee with representatives from DDA community provider agencies, self-advocates, parents, Medical Examiners Office, Maryland’s Mental Health Administration, physicians, etc. as defined in State statute. The purpose is to prevent avoidable deaths and improve the quality of care for individuals with developmental disabilities and mental health issues.



2. The DDA PORI Committee, with representatives from OHCQ, DDA regional offices, DDA Chief of Quality Assurance, and provider agencies, which reviews implementation of the PORI and makes revisions as needed.
3. The DDA Statewide Behavior Management Committee, which meets bi-monthly to promote and monitor the safe, effective and appropriate use of behavior change techniques through recommendations to DDA. Members include representatives of DDA headquarters and regional offices, community provider agencies, Behavioral Problem Supports (BPS) trainers and statewide trainers.
4. The DDA Statewide QA Committee, that meets quarterly to address the PORI, track and review community providers' QA plans, discuss issues related to community provider agencies, update and inform the regional QA staff of any new policies, procedures or statutes. And,
5. The DDA/OHCQ Committee, that meets quarterly to address PORI issues, track and review licensing surveys of community providers, discuss issues related to requested sanctions and/or other actions against community provider agencies and to discuss collaborative efforts between OHCQ and DDA.

In addition to a narrative description of the processes and procedures the State has in place to ensure they are protecting waiver participants health and safety and preventing instances of abuse, neglect and exploitation, the State included examples of the various reports and forms it used to implement and monitor PORI and an agenda used for PORI training offered to providers in July 2006. Also, the State provided examples of minutes reported for various team and committee meetings; an annual report from the Mortality Review Committee; communications between DDA and OHCQ regarding the Mortality Review findings; and a chart reflecting findings from the Standing Committee on Training's surveys of provider training efforts.

**Suggested Recommendations:** The Quality Plan for Maryland DDA's HCBS Waiver Programs should be updated to directly address the composition, role, and responsibilities of the Statewide Quality Assurance Committee. The State should also be keeping records of quality improvement initiatives identified through their review and actions taken to improve their waiver program administration.

The Quality Plan was developed prior to the approval of the New Directions Waiver and the State must assure it is updated and modified to address unique aspects of this self-directed waiver, including oversight of FMS entities.

#### **The State's Response:**

"Recommendations from CMS:

- 1) The Quality Plan for Maryland DDA's HCBS Waiver Programs should be updated to directly address the composition, role, and responsibilities of the Statewide Quality Assurance Committee. The State should also be keeping records of quality improvement initiatives



identified through their review and actions taken to improve their waiver program administration.

Response: The Maryland Department of Health and Mental Hygiene concurs with CMS that the Quality Plan for Maryland DDA's HCBS Waiver Programs should be updated to directly address the composition, role, and responsibilities of the Statewide Quality Assurance Committee and that records of quality improvement initiatives and results should be captured. The Maryland Medical Care Program and Developmental Disabilities Administration are currently in the process of updating the Quality Plan. An updated and modified Quality Plan will include information regarding the composition, role, and responsibilities of the Statewide Quality Assurance Committee and procedures for recording quality improvement initiatives and results.

2) The Quality Plan was developed prior to the approval of the New Directions Waiver and the State must assure it is updated and modified to address unique aspects of this self-directed waiver, including oversight of FMS entities.

Response: The Maryland Department of Health and Mental Hygiene concurs with CMS that the Quality Plan which was developed prior to the approval of the New Directions Waiver needs to be updated. The Maryland Medical Care Program and Developmental Disabilities Administration are currently in the process of updating the Plan. An updated and modified Quality Plan will include procedures for oversight of FMS entities."

## **V. State Medicaid Agency Retains Administrative Authority Over the Waiver Program**

**The State must demonstrate that it retains ultimate administrative authority over the waiver program and that its administration of the waiver program is consistent with its approved waiver application.**

*Authority: 42 C'FR 441.303; 42 CFR 431 • SMM 4442.6; SMM 4442.7*

**The State demonstrates the assurance but CMS recommends improvements or requests additional information.**

**Evidence Supporting This Conclusion:** Maryland's Department of Health and Mental Hygiene (DHMH) is the single state agency charged with administration of Medicaid. Within DHMH, the Office of Health Care Financing, Office of Health Services/Medical Care Programs (OHS/MCP) oversees the administration of all Medicaid HCBS waivers through its Division of Waiver Programs (DWP). DDA is a separate unit of DHMH, and is the operating agency for both the New Directions (0424-IP) and Community Pathways (0023.91.R3.04) HCBS waivers. OHCQ is also a separate operating unit within DHMH. The State's description of their roles and responsibilities of the components does not comport with the formal agreements between components and DDA's current Quality Plan. The DDA has a Quality Plan, dated December 10, 2003, that delineates responsibility assigned to each component with regard to administration, operation and oversight of the HCBS Waivers.



The DDA and OHS/MCP entered a Memorandum of Agreement (MOA) to delineate their roles and responsibilities; it was effective July 1, 2000. It was prior to approval of the New Directions waiver and also before the Quality Plan covering both waivers was developed.

Another MOU delineates roles and responsibilities of DDA and OHCQ regarding licensure of community based services providers. It is dated August 19, 2002, which also predates approval of the New Directions Waiver and Quality Plan.

The State provided copies of minutes from Management Team Meetings and Statewide Resource Coordinators Meetings and Statewide Quality Assurance Meetings, to support that communication between the DHMH components involved in administration and oversight of the waiver is occurring. The State did not provide documentation to show that DDA conducts periodic audits and reviews, including sampling and compilation of aggregate data to measure that all HCBS waiver assurances are being met, even though the MOA with MCP assigns this role to DDA. The MOA does not show that MCP is responsible for general oversight of the waiver programs operated by DDA.

No MOU defining the relationship between MCP and OHCQ was provided. The State asserts that communications and reporting take place within the context of routine daily communication between DHMH components and through official meetings (e.g., Management Team Meetings, Statewide Resource Coordinators Meetings, and Statewide Quality Assurance Meetings).

**Suggested Recommendations:** The Quality Plan was developed prior to the approval of the New Directions Waiver. The State must assure it is updated and modified to address unique aspects of this self-directed waiver.

Inter-agency agreements (MOU and MOA) should be updated to reflect current roles and responsibilities and to formally assign the general oversight role and describe related activities (e.g., sampling, case file review, aggregate reporting, surveys, etc.). As written, the MOUs suggest collaboration, but do not describe a general oversight role. Similarly, the Quality Plan needs to specify which component has responsibility for general oversight of the waiver. Where sampling, data collection and aggregation are employed by the State to demonstrate that assurances are being met, agreements should be specific about frequency, volume, reporting requirements, etc. Also, responsible components/positions should be identified. Finally, CMS recommends that the State assure sufficient staffing so that components can meet their responsibilities under the HCBS waiver programs.

Note: There is an extensive discussion about CMS' expectations of waiver oversight activities included in Appendix A: Section of the Instructions, Technical Guide and Review Criteria for Version 3.4 of the Waiver Application.

### **The State's Response:**

“CMS Recommendations:

- 1) The Quality Plan was developed prior to the approval of the New Directions Waiver. The State must assure it is updated and modified to address unique aspects of this self-directed waiver.



Response: The Maryland Department of Health and Mental Hygiene concurs with CMS that the Quality Plan which was developed prior to the approval of the New Directions Waiver needs to be updated. The Maryland Medical Care Program and Developmental Disabilities Administration are currently in the process of updating the Plan. An updated and modified Quality Plan will reflect the unique aspects of the New Directions waiver and will be submitted with the waiver renewal application prior to April 1, 2008.

2) Inter-agency agreements (MOU and MOA) should be updated to reflect current roles and responsibilities and to formally assign the general oversight role and describe related activities (e.g., sampling, case file review, aggregate reporting, surveys, etc.). As written, the MOUs suggest collaboration, but do not describe a general oversight role. Similarly, the Quality Plan needs to specify which component has responsibility for general oversight of the waiver. Where sampling, data collection and aggregation are employed by the State to demonstrate that assurances are being met, agreements should be specific about frequency, volume, reporting requirements, etc. Also, responsible components/positions should be identified. Finally, CMS recommends that the State assure sufficient staffing so that components can meet their responsibilities under the HCBS waiver programs.

Response: The Maryland Medical Care Program, as the single state Medicaid agency is responsible for oversight of home and community based services waiver programs. The MOA between the Medical Care Programs and DDA will be modified to clarify this role. Further, DDA and OHCQ will revise and update their MOU. In addition, an updated and modified Quality Plan will reflect specific frequency, volume, reporting requirements as well as responsible components/positions, and will be submitted with the waiver renewal application prior to April 1, 2008.”

## **VI. State Provides Financial Accountability for the Waiver**

**The State must demonstrate that it has designed and implemented an adequate system for assuring financial accountability of the waiver program.**

*Authority: 42 CFR 441.302; 42 CFR 441.303; 42 CFR 441.308; 45 CFR 74~ SMM 2500; SMM 4442.8; SMM 4442.10*

**The State demonstrates the assurance but CMS recommends improvements or requests additional information.**

**Evidence Supporting This Conclusion:** The payment process for claims under the New Directions begins with development and approval of the individual plan and budget. The DDA-approved plan is copied to the FMS, which reviews submitted receipts and invoices against the individual plan and budget and then codes claims (CMS-1500) in accordance with the approved service plan. DDA Staff review the CMS-1500 for accuracy before processing. Edits are in place to ensure that certain services that are duplicative cannot be claimed for the same consumer. The FMS is required to be audited on an annual basis by a certified independent auditor.



Maryland provided a description of the payment process, including a summary of how the Federal Billing Unit monitors federal claims to ensure proper handling. It also included copies of the reports used in the process. In addition, the evidence included copies of Fiscal Meeting Agendas documenting discussion of waiver billing processes to demonstrate that the State is addressing pertinent matters. In addition to documentation provided, the DDA website houses information to educate waiver providers about their responsibilities and billing practices. The State is current with their financial reporting (CMS 372s) for this waiver.

**Suggested Recommendations:** When the State updates the Quality Plan for DDA waivers, it should fully describe processes in place to ensure financial accountability, frequency of activities and assigned roles. It should fully address oversight of FMS entities. Further, CMS recommends the State incorporate a formal sampling methodology with provision to capture aggregate data and record quality improvement measures implemented as a result of oversight activities.

#### **The State's Response:**

"CMS Recommendations:

1) When the State updates the Quality Plan for DDA waivers, it should fully describe processes in place to ensure financial accountability, frequency of activities and assigned roles. It should fully address oversight of FMS entities.

Response: The Maryland Department of Health and Mental Hygiene concurs with CMS that an updated Quality Plan should fully describe processes in place to ensure financial accountability, frequency of activities and assigned roles, including oversight of FMS entities. The Maryland Medical Care Program and Developmental Disabilities Administration are currently in the process of updating the Plan. An updated and modified Quality Plan will reflect the financial accountability mechanisms of the New Directions waiver and will be submitted with the waiver renewal application prior to April 1, 2008.

2) CMS recommends the State incorporate a formal sampling methodology with provision to capture aggregate data and record quality improvement measures implemented as a result of oversight activities.

Response: The Maryland Department of Health and Mental Hygiene concurs with CMS that the State should incorporate a formal sampling methodology with provision to capture aggregate data and record quality improvement measures implemented as a result of oversight activities.. The Maryland Medical Care Program and Developmental Disabilities Administration are currently in the process of updating its Quality Plan. An updated and modified Quality Plan will reflect sampling methods and methods for recording quality improvement measures. The updated Quality Plan will be submitted with the waiver renewal application prior to April 1, 2008."

#### **Summary of Findings for Each Assurance**

- The evidence provided demonstrates that the State implements the processes and instrument(s) specified in the approved waiver for evaluating/re-evaluating an

applicant's/waiver participant's level of care consistent with the need for care provided in an ICF/MR. However, CMS recommends improvements or requests additional information.

- The evidence provided demonstrates that the State has designed and implemented an adequate system for reviewing the adequacy of service plans for waiver participants. However, CMS recommends improvements or requests additional information.
- The evidence provided demonstrates that the State has designed and implemented an adequate system for assuring that all waiver services are provided by qualified providers. However, CMS recommends improvements or requests additional information.
- The evidence provided demonstrates that, on an ongoing basis, it identifies, addresses, and seeks to prevent instances of abuse, neglect and exploitation. However, CMS recommends improvements or requests additional information.
- The evidence provided demonstrates that the State retains ultimate administrative authority over the waiver program and that its administration of the waiver program is consistent with its approved waiver application. However, CMS recommends improvements or requests additional information.
- The evidence provided demonstrates that it has designed and implemented an adequate system for assuring financial accountability of the waiver program. However, CMS recommends improvements or requests additional information.



## Attachment A – Summary of State’s Planned Activities with Timeline

Activity	Target Date
Sampling program to demonstrate that the State is following its procedures and that LOC decisions are appropriate and timely	December 31, 2007; To be integrated in updated Quality Plan to be submitted by April 1, 2008
Formalized process for oversight of OHCQ	January 31, 2008; To be integrated in updated Quality Plan to be submitted by April 1, 2008
Crosswalk demonstrating specific points of assurances and include a specific sample size	January 31, 2008; To be integrated in updated Quality Plan to be submitted by April 1, 2008
Enhanced processes for measuring overall agency performance by OHCQ and DDA	February 27, 2008; To be integrated in updated Quality Plan to be submitted by April 1, 2008
Improved formal communication methods between OHCQ and DDA	December 31, 2007; To be integrated in updated Quality Plan to be submitted by April 1, 2008
Update the current MOU between OHCQ and DDA to accurately reflect practices	February 27, 2008; To be integrated in updated Quality Plan to be submitted by April 1, 2008
Stakeholder feedback regarding Resource Coordination	September 30, 2007; Reforms to be submitted as part of waiver renewal by April 1, 2008
Procedures for oversight of FMS entities	September 30, 2007; To be integrated in updated Quality Plan to be submitted by April 1, 2008
Clarification of composition, role, and responsibilities of the Statewide Quality Assurance Committee	September 30, 2007; To be integrated in updated Quality Plan to be submitted by April 1, 2008
Process for recording quality improvement initiatives and results should be captured	September 30, 2007; To be integrated in updated Quality Plan to be submitted by April 1, 2008
MCP and DDA review and update of MOU	January 31, 2008; To be integrated in updated Quality Plan to be submitted by April 1, 2008
Review and update of financial accountability mechanisms	November 30, 2007; To be integrated in updated Quality Plan to be submitted by April 1, 2008
Formal sampling methodology to capture aggregate data and record quality improvement measures implemented as a result of oversight activities	February 27, 2008; To be integrated in updated Quality Plan to be submitted by April 1, 2008
The updated Quality Plan will be submitted with the waiver renewal application prior to April 1, 2008.	April 1, 2008